

UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. 10/528,512

Attorney Docket No. SEMT.P-027-USNP

**REQUEST TO REISSUE OFFICE ACTION AS NON-FINAL
AND RESET THE RESPONSE PERIOD PURSUANT TO MPEP § 710.06**

The Applicant respectfully requests that the Office Action dated December 5, 2008 for the above-captioned U.S. Patent Application be made non-final and that the period of time for response be reset accordingly. As grounds, the Applicant states as follows:

In the Examiner's present Office Action, the Examiner cited two new references as justification for maintaining the Examiner's rejections after the Applicant's August 8, 2008 Response to the Office Action dated February 27, 2008. See Page 16, paragraph 7 of the present Office Action. In addition, one of those two Examiner-cited references is non-patent literature *without* providing a copy of said non-patent reference to the Applicant. The Examiner-cited references at issue are: U.S. Patent Application Publication 2001/0022406 A1 to Woodmansee *et al.*, and NN8905367, *Pressure-Sensitive Cursor Control Keypads, IBM Technical Disclosure Bulletin, May 1989*.

Furthermore, the Examiner contemporaneously with the present Office Action listed in the "Notice of References Cited" six previously uncited references. However, with the exception of the Woodsmanee publication, none of the other six newly-cited patent-related documents were actually used in the present Office Action. These six references are as follows:

- U.S. Patent No. 4,855,550 to Shultz
- U.S. Patent No. 5,194,852 to More
- U.S. Patent No. 7,102,520 to Liu
- U.S. Patent Application Publication No. 2001/0022406 to Woodsmanee *et al.*
- U.S. Patent No. 6,478,565 to Woodsmanee *et al.*
- U.S. Patent No. 6,294,113 to Woodsmanee *et al.*

Overall, none of the total of seven new Examiner-cited disclosures (including the non-patent literature) were necessitated by any amendments to the claims by the Applicant.

Similarly, none of these seven Examiner-cited references were disclosed in any Information Disclosure Statement prior to the present Office Action.

MPEP § 706.07(a) indicates that making an office action final is improper when a new ground of rejection is entered that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR § 1.97(c).

In the present case, the Examiner has explicitly used the Woodmansee publication and IBM Technical Bulletin NN8905367 to refute arguments made by the Applicant in the Applicant's Response (dated August 28, 2008) to the Office Action dated February 27, 2008. In effect, the Examiner has added new grounds to try and sustain the Examiner's rejections. It is improper to make the present Office Action final when adding a new ground of rejection and citing new alleged prior art. Moreover, it is an improper procedure not to make the Examiner-cited non-patent literature available to the Applicant. Consequently, the Applicant is unreasonably being denied adequate notice or opportunity to respond.

Accordingly, pursuant to MPEP § 710.06, the Applicant respectfully requests that the present Office Action be made NON-final, the Examiner provide a copy of the non-patent literature cited, and that the response period for the present Office Action be reset.

Respectfully submitted,

/s/
Terrence M. Wyles
USPTO Reg. No. 61,035